



TC01356

Appeal number TC/2011/02885

VAT – late payment – default surcharge – language problems argued – no reasonable excuse found – appeal dismissed

FIRST-TIER TRIBUNAL

TAX

FELDBINDER (UK) LIMITED

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: TRIBUNAL JUDGE MANUELL

**Sitting in public at Eastbrook, 1 Shaftesbury Road, Brooklands Avenue, Cambridge
CB2 8DR on 17 June 2011**

Mr J Harrison FCA for the Appellant

Mrs K Walker, HMRC Presenting Officer, for the Respondents

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DECISION

1. The Appellant company, a wholly owned subsidiary of the parent company based in the Federal Republic of Germany, appealed against the default surcharge notice in the sum of £8,719.44 dated 12 November 2010, amended by letter dated 11 March 2011, imposed under Section 59 of the VAT Act 1994 for the late payment of VAT due for the quarter ended September 2010. The applicable rate of surcharge was 2%, the rate having been reduced from 5% when representations were made to the Respondent. The Appellant had been in the surcharge regime since March 2009, although that had been brought back to September 2009 on 11 March 2011. Three previous surcharge liability notices had been received, of which the first dated 4 June 2009 had been withdrawn on 11 March 2011. The dates of the payments received as recorded in the Schedule prepared by the Respondent produced to the Tribunal were not in dispute, as Mr Harrison for the Appellant confirmed. The issue was whether the Appellant could show a reasonable excuse with reference to Sections 70 and 71 of the VAT Act 1994 against the latest default.

2. Mr Harrison for the Appellant submitted that the reason the payment was late was because of a linguistic misunderstanding. This had been described in the letter dated 4 April 2011 incorporated in the Notice of Appeal as a mistaken belief that 10 days were available for the required payment, derived from a combination of factors involving the bank statements showing the transactions as Direct Debit payments together with the HMRC 'How to Pay' Guidelines referring to 10 days for Direct Debit payments, the complexity of those payment instructions as a package, the technical nature of the language in the Guidelines and the native foreign language of the German senior management dealing with the payment arrangements. It was the case that that the German directors took their obligations seriously. There was no shortage of funds, as a copy of the company current account statement for the material period produced to the Tribunal showed. The Appellant company had changed from monthly payments to quarterly payments following a fall in its turnover. The company had registered with the Respondent for on line payments by direct debit. Under this system HMRC collect the amount due after the VAT return has been submitted. The directors had not understood exactly how the procedure operated. The structure of the business had led to administrative problems. The accountants appointed in 2010 were acting in a book keeping rôle only.

3. Mrs Walker for the Respondent submitted that no reasonable excuse could be deduced from the admitted facts. There had been previous defaults and the company was aware of the need for attention to its compliance. The submission of the VAT return identified the sum due to be paid as well as the due date for payment. The company had paid previously by CHAPS and so the directors were aware of electronic banking procedures. The Appellant used Barclays Bank plc and possibly that bank's on line guidance was misleading. But that was hardly the Respondent's fault. The Appellant had not registered soon enough with the Respondent for the on line collection of the VAT due to have been taken on time.

4. Mr Harrison in reply reiterated his earlier submissions. The Appellant's directors had made a false assumption about the system which was caused by a linguistic difficulty. There had been no intention to delay payment.

5. The Tribunal reserved its determination, which now follows.

5 6. The Tribunal agrees with the submissions made by Mrs Walker and adopts them. It must be recalled that VAT as collected is the property of the state and thus it is in the interests of all citizens and corporations, above all, all tax payers, that VAT collection obligations are rigorously enforced by means of the statutory scale fixed by Parliament. While there may be rare circumstances where the application of that
10 statutory scale will produce a disproportionate outcome, the Tribunal finds that the surcharge penalty in the present appeal falls far short of disproportionality. Earlier warnings had gone unheeded.

7. Where persons elect to do business and to trade in a foreign country, with a foreign language, it is plain that there is much potential for misunderstanding. That
15 applies just as much within the European Union as outside it. Customs and traditions vary, perhaps subtly but always with some risk attached. It falls on the foreigner to ensure that local compliance is achieved. The published guidance of the Respondent, "How to pay VAT", is in the Tribunal's opinion clear and helpful, and offers a range of payment options. If the Appellant's directors were unsure of the correct procedure
20 to ensure timely payment of the VAT collected by the company, they had several choices as well as ample opportunity to seek advice. The company's trading had given rise to substantial VAT collection obligations and the relevant quarter was not unusual. The directors had United Kingdom accountants on hand yet chose not to consult them, even when the company had been notified that it was in the default
25 surcharge regime. The fact is, and the Tribunal so finds, that the Appellant's directors failed to allow sufficient time between submission of their VAT return and the payment or collection of the sum due from them. The Appellant has failed to prove a reasonable excuse for the delay. The surcharge in the sum of £8,719.44 is upheld and the appeal is dismissed.

30 This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (as amended). The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to
35 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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TRIBUNAL JUDGE MANUELL
RELEASE DATE: 26 JULY 2011